

Respondent.

No. 13-1039 PO

Marvin L. Berry is subject to discipline because he committed three criminal offenses.

The Director cites the request for admissions that was served on Berry on November 12, 2013. Berry did not respond to the request. Under Supreme Court Rule 59.01, the failure to

¹ Our record contains both the affidavit of personal service and a copy of a certified mail receipt signed by Berry, both showing a service date of October 10, 2013.

answer a request for admissions establishes the matters asserted in the request, and no further proof is required.² Such a deemed admission can establish any fact or any application of law to fact.³ That rule applies to all parties, including those acting *pro se*.⁴ Section 536.073⁵ and our Regulation 1 CSR 15-3.420(1) apply that rule to this case.

We gave Berry until January 16, 2014, to respond to the motion, but he did not respond. Therefore, the following facts are undisputed.

Findings of Fact

1. Berry is licensed as a peace officer. His license is, and was at all relevant times, current and active.
2. On August 4, 2010, Berry operated a motor vehicle on the streets of the City of Hillsdale, Missouri, without registering the vehicle with the Missouri Department of Revenue.
3. On August 4, 2010, during a traffic stop, Berry refused to give a law enforcement officer his driver's license and proof of car insurance. He drove his vehicle away from the law enforcement officer after that officer asked him to get out of his vehicle.
4. Berry refused to get out of his vehicle after he was stopped a second time. He pulled his hands away while he was being handcuffed by a law enforcement officer. After he had been placed under arrest, Berry refused to get into a law enforcement officer's patrol car. After he had been transported to a police station, Berry refused to walk and refused to allow a law enforcement officer to search his person.

² *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

³ *Linde v. Kilbourne*, 543 S.W.2d 543, 545-46 (Mo. App., W.D. 1976).

⁴ *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

⁵ RSMo 2000. Statutory references, unless otherwise noted are to the 2013 Supplement to the Revised Statutes of Missouri.

5. Berry committed the following criminal offenses: failing to register a motor vehicle; refusing to obey any signal or direction of a law enforcement officer; and resisting or interfering with arrest, detention or stop.⁶

Conclusions of Law

We have jurisdiction to hear this complaint.⁷ The Director has the burden of proving that Berry has committed an act for which the law allows discipline.⁸

Berry admitted facts, but the Director did not ask Berry to admit that those facts authorize discipline. In any event, statutes and case law instruct us that we must “separately and independently” determine whether such facts constitute cause for discipline.⁹ Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

The Director argues that there is cause for discipline under § 590.080:

1. The Director shall have cause to discipline any peace officer licensee who:

(2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]

The Director argues that Berry committed the criminal offense of failure to register a motor vehicle in violation of § 301.020:

1. Every owner of a motor vehicle or trailer, which shall be operated or driven upon the highways of this state, except as herein otherwise expressly provided, shall annually file, by mail or otherwise, in the office of the director of revenue, an application for registration on a blank to be furnished by the director of revenue for that purpose containing:

⁶ Sections 301.020, 556.022, and 575.150, respectively.

⁷ Section 590.080.2.

⁸ *Missouri Real Estate Comm’n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

⁹ *Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).

- (1) A brief description of the motor vehicle or trailer to be registered, including the name of the manufacturer, the vehicle identification number, the amount of motive power of the motor vehicle, stated in figures of horsepower and whether the motor vehicle is to be registered as a motor vehicle primarily for business use as defined in section 301.010;
- (2) The name, the applicant's identification number and address of the owner of such motor vehicle or trailer;
- (3) The gross weight of the vehicle and the desired load in pounds if the vehicle is a commercial motor vehicle or trailer.

6. Anyone who fails to comply with the requirements of this section shall be guilty of a class B misdemeanor.

Berry admitted that he operated a motor vehicle on the streets of the City of Hillsdale, Missouri, without registering the vehicle with the Missouri Department of Revenue. He committed the criminal offense.

The Director argues that Berry committed the criminal offense of refusing to obey any signal or direction of a law enforcement officer in violation of § 556.022:

It shall be the duty of the operator or driver of any vehicle or the rider of any animal traveling on the roads of this state to stop on signal of any law enforcement officer and to obey any other reasonable signal or direction of such law enforcement officer given in the course of enforcing any infraction. Any person who willfully fails or refuses to obey any signal or direction of a law enforcement officer given in the course of enforcing any infraction, or who willfully resists or opposes a law enforcement officer in the proper discharge of his or her duties in the course of enforcing any infraction, is guilty of a class A misdemeanor and on plea or finding of guilt thereof shall be punished as provided by law for such offenses.

The Director also argues that Berry committed the criminal offense of resisting or interfering with arrest detention or stop in violation of § 575.150:

1. A person commits the crime of resisting or interfering with arrest, detention, or stop if, knowing that a law enforcement officer is making an arrest, or attempting to lawfully detain or stop an individual or vehicle, or the person reasonably should know that a law enforcement officer is making an arrest or attempting to lawfully detain or lawfully stop an individual or vehicle, for the purpose of preventing the officer from effecting the arrest, stop or detention, the person:

(1) Resists the arrest, stop or detention of such person by using or threatening the use of violence or physical force or by fleeing from such officer; or

(2) Interferes with the arrest, stop or detention of another person by using or threatening the use of violence, physical force or physical interference.

2. This section applies to:

(1) Arrests, stops, or detentions, with or without warrants;

(2) Arrests, stops, or detentions, for any crime, infraction, or ordinance violation; and

(3) Arrests for warrants issued by a court or a probation and parole officer.

3. A person is presumed to be fleeing a vehicle stop if that person continues to operate a motor vehicle after that person has seen or should have seen clearly visible emergency lights or has heard or should have heard an audible signal emanating from the law enforcement vehicle pursuing that person.

4. It is no defense to a prosecution pursuant to subsection 1 of this section that the law enforcement officer was acting unlawfully in making the arrest. However, nothing in this section shall be construed to bar civil suits for unlawful arrest.

5. Resisting or interfering with an arrest is a class D felony for an arrest for a:

(1) Felony;

(2) Warrant issued for failure to appear on a felony case; or

(3) Warrant issued for a probation violation on a felony case.

Resisting an arrest, detention or stop by fleeing in such a manner that the person fleeing creates a substantial risk of serious physical injury or death to any person is a class D felony; otherwise, resisting or interfering with an arrest, detention or stop in violation

of subdivision (1) or (2) of subsection 1 of this section is a class A misdemeanor.

Berry admitted the conduct we have set forth in Findings 3 and 4. We find that this conduct constitutes the commission of these two criminal offenses.

We find cause for discipline under § 590.080.1(2).

Summary

We grant the motion for summary decision and cancel the hearing.

SO ORDERED on February 18, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner